

Administrative Council
Radisson Hotel, Bismarck, ND
September 11, 2015

Present:

Chief Justice Gerald W. VandeWalle, Chair
Judge Donovan Foughty
Judge John Greenwood
Judge William Herauf
Judge James Hill for Judge Gail Hagerty
Judge John Irby
Judge Jon Jensen
Justice Carol Ronning Kapsner
Judge Gary Lee
Judge Doug Mattson
Tracy Peters
Judge Frank Racek
Judge Kirsten Sjue for David Nelson

Absent:

Judge Laurie Fontaine
Judge Bruce Romanick

Staff:

Sally Holewa

Others Present:

Justice Lisa Fair McEvers
Scott Johnson
Rod Olson
Carolyn Probst
Donna Wunderlich
Don Wolf
Larry Zubke

Minutes:

Renee Barnaby

Chief Justice Gerald VandeWalle called the meeting to order at 10:00 a.m. and welcomed Judge Lee as the new Presiding Judge of the North Central District.

Minutes

It was moved by Judge Herauf, seconded by Justice Kapsner, to approve the May 18, 2015 minutes. The motion carried.

Procedure for Closing Informal Probate Cases

Sally Holewa recalled in 2014, the Council started reviewing Policy 505. During the review of that policy, Judge Zane Anderson submitted a proposal to close informal probates in the same way as formal probates are closed. The proposal went out for comment to the probate section of the State Bar Association. Six comments were received all opposing the change to the policy. Ms. Holewa said technically speaking, it is closed on our system as soon as a disposition is entered, which would be the issuance of the letters.

Judge Herauf noted Judge Anderson's concern was some lawyers are continually billing the estate when it is not closed and some bills are accumulating for years and are being handed off to the next of kin. He said to reopen the case only takes a simple motion. Judge Lee added that sometimes in the mineral cases, they have been sitting there for so long that the original personal representative is deceased as well so that process has to be restarted anyway.

Justice Kapsner said there are several informal probates with minimal assets, and this is one more step that costs the client so she is uncertain it is necessary. She questioned the need since procedurally it is already closed in the court's system.

Judge Racek suggested it would not be an extra expense to the litigants if the letters testamentary were effective for three years. Justice Kapsner said if Judge Racek's option is pursued, then she suggests asking the legislature to amend the statute so that the letters are effective for three years.

It was decided that the Council will take no action on Judge Anderson's recommendation.

Firearms Restriction Order

Sally Holewa said in follow up to a previous meeting, Bismarck attorney Greg Runge had contacted Donna Wunderlich with a question concerning the firearms restriction order the court is using. Ms. Wunderlich distributed and reviewed Mr. Runge's proposed changes to the form. She said she is assuming Mr. Runge's complaint is that the judge should not be restricting firearms for someone who is committed under the general chapter and that the court should not be restricting anyone's access to firearms if they are chemically dependent and not mentally ill.

After brief discussion, it was the consensus of the Council to ask Jim Ganje to review the proposed changes and bring it back to the next meeting. Mr. Ganje is free to talk with Mr. Runge to clarify any of this requested changes.

Clerk of Court Manual

Sally Holewa explained the first change to the manual reflects the court's decision to discontinue the use of visual file stamps. The manual has been updated to indicate that "filed" means "the date the document is submitted" rather than "the clerk accepting custody of a document." The other more substantive change is with the notice of appeal being filed at the supreme court rather than the district court. New language has been added that if the notice of appeal is mistakenly filed with the district court, the clerk shall note on the document the date it was received.

Ms. Holewa said she received a request from a judge regarding an incident where a private party drafted criminal complaints against the state's attorney and then brought them to the clerk to file. The judge requested that the clerks be told that they should not allow those types of filings to occur. Ms. Holewa stated the clerks do not make decisions concerning the rights of parties. They can send documents back for clarification or for correction, but they do not ultimately decide whether someone has the right to file something or not. She is requesting direction from the Council.

Chief Justice VandeWalle noted concern with the proposed language that states, "The drafting and filing of criminal complaints is the exclusive province of the prosecutor...". In order to comply with Rule 3, N.D.R.Crim.P., he suggested the language be amended to state that any complaint must be approved by the magistrate.

Judge Greenwood noted in practice, the documents are brought to the clerk and the clerk assigns a file number before they are given to a judge. If the procedure is done in reverse, the documents will not have been assigned a number nor have been through the clerk's office.

Judge Racek suggested deleting the sentence referring to the drafting and filing of criminal complaints is the exclusive province of the prosecutor. He then suggested amending the second sentence to state that a complaint filed by a person other than a prosecutor, or a citation issued by someone other than a licensed peace officer, may not be filed unless approved by a magistrate. Judge Herauf expressed support for Judge Racek's suggested language to help clarify the procedural rules. He said absent that it would have to be a rule change and it would have to go to the Joint Procedure Committee or be done through a legislative change.

It was moved by Judge Racek, seconded by Judge Herauf, to amend paragraph A to read as follows: "Receive the initialing document and any supporting papers. A complaint filed by a person other than a prosecutor, or a citation issued by someone other than a licensed peace officer, may not be filed unless approved by a magistrate." The motion carried.

Court Security Manual

Scott Johnson recalled at the May 2015 Administrative Council meeting, he was directed to draft revisions to the court security manual and bring them back to the Council for review. He noted a sample manual has been included at the end of the court security manual. With regard to the updates in Section B, they provide that it is a county committee rather than a district committee. It is also suggested, rather than required, that a judge preside over the committee if possible and meetings be held at least yearly.

Justice McEvers indicated she is concerned that naming the committee the "County" Court Security Advisory Committee will cause confusion since we no longer have county courts. Chief Justice VandeWalle suggested the name of the county be added to the title.

Mr. Johnson noted with regard to Section E, the word “employ” was added to indicate that the county should not only have a magnetometer but also use it. Language was also added that if it is the desire to have a weapons free courtroom or court facilities that courtesy firearm storage may be available.

Ms. Holewa said the when manual was originally adopted, the focus of the court security advisory group was at the district court. At the request of some of the judges, the manual was modified to include a focus at the county level rather than just at the district level.

It was moved by Judge Mattson, seconded by Judge Hill, to adopt the court security manual. The motion carried.

Mental Health Commitment Forms

Sally Holewa noted that at the May 2015 meeting, the Council reviewed revisions to the mental health commitment forms prepared by the Committee on Trial Court Operations. The Council approved the forms but requested that the legislative changes come back to the Council so the Council would be aware of the changes. Ms. Holewa said Jim Ganje noted that while there were numerous technical changes, the only significant change was to add two new types of examiners who may serve as an expert examiner. The forms were effective August 1.

Policy 511, Court Recording Procedures

Scott Johnson said the Court Recording Procedures policy has not been updated in approximately 10 years. The proposed amendments conform with the current practices and procedures of digital recording. The changes before the Council are the work of the Digital Recording Workgroup. The workgroup is made up of recorders throughout the state, a representative from the IT staff, and a stenographer. It is chaired by an assistant unit administrator. Mr. Johnson reviewed the changes concerning the current practices, procedures and responsibilities of the person taking the electronic record, the changes relating to terminology, and the expectations and problem-solving of daily digital recordings.

Mr. Johnson noted with regard to the backup of the record, the recording itself is on a server and the record is backed up on a CD or DVD, which is maintained by the court recorder. He said the digital storage is backed up as well. Mr. Zubke emphasized that if something happens to the courtroom PC during the early evening hours and it has not upload, the only back up is the CD so it is preferred that the backup be done immediately.

Judge Kapsner noted the sentence on page 8, section, B.1.1. needs to be reworked. She also noted that the sentence on page 3, section B.9. should begin with the word “stopping”.

It was moved by Judge Foughty, seconded by Judge Hill, to approve the policy subject to the changes suggested by Justice Kapsner. The motion carried and will be sent out to employees for comment.

Policy 504, Professional Development Administrative Personnel

Scott Johnson said the proposed changes to Policy 504 are from the Judicial Branch Education Commission. The suggested changes include a reference to juvenile court personnel as those who are specifically recognized as benefitting from continuing professional development. The changes also remove references to specific Institute for Court Management (ICM) class titles, and gives the State Court Administrator discretion as to whether an employee can attend other programs while enrolled in the court management program.

Justice Kapsner and Judge Lee noted improper use of pronouns in the proposed language under section 2. It was suggested either making the pronouns plural or singular. Ms. Holewa stated that she prefers the plural form.

In response to a question by Judge Mattson asking if there is similar training in-state if it would be given priority over the out-of-state training, Ms. Holewa responded the five course ICM training sponsored by the National Center for State Courts happens once every two years and is held jointly with the state of South Dakota. For that reason, half of the classes are held in North Dakota and half occur in South Dakota.

It was moved by Judge Mattson, seconded by Judge Greenwood, to approve the policy with the grammatical corrections suggested. The motion carried.

Juvenile Policy Board

Judge Herauf said with Judge John Grinsteiner's appointment to the bench, it leaves a vacancy of a judicial referee member on the Juvenile Policy Board. The referee appointment is made by the Administrative Council. Both Susan Solheim and Wayne Goter have expressed interest in serving on the Board.

Scott Johnson stated the position has been served by a referee from the South Central District for a number of years so it might be worthwhile to look at a representative from another part of the state. Rod Olson indicated the East Central is going through some changes with the juvenile court in Fargo so it might not be the best time to use one of the referees from that district.

It was moved by Judge Foughty, seconded by Judge Hill, to appoint Referee Wayne Goter to the Juvenile Policy Board. The motion carried.

Meeting adjourned.